Memorandum

MIAMI-DADE COUNTY

Date: March 5, 2013

Agenda Item No. 8(A)(2)

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Farming Lease Agreement with JNJ Growers, Inc., at Kendall-Tamiami Executive Airport

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the award of a farming lease for 43 acres at Kendall-Tamiami Executive Airport (TMB) to JNJ Growers, Inc.

SCOPE

The acreage is located at Kendall-Tamiami Executive Airport in Commissioner Juan C. Zapata's District 11.

FISCAL IMPACT/FUNDING SOURCE

This lease agreement will generate $22,875.57 annually in land rent revenue for the Miami-Dade Aviation Department (MDAD) over the course of its potential nine-year term of four years plus five one-year extensions.

TRACK RECORD/MONITOR

JNJ Growers, Inc. has a satisfactory performance and payment record. MDAD Business Development Coordinator Maria Anon will monitor the contract.

BACKGROUND

The Aviation Department has leased TMB land for farming purposes for many years in an effort to reduce ground-keeping maintenance requirements, provide additional revenues to MDAD, and contribute to the agribusiness economy of Miami-Dade County. The leases are put out for bid with terms generally set for 10 years. The minimum bid per acre was $350.00.Three bids were received: JNJ Growers, Inc. bid $531.99 per acre, Joe De Sousa bid $451.99, and Perez Growers LLC bid $501.99.

In order to take advantage of the winter/spring growing season while this four-year lease with five one-year extensions was prepared for approval by the Board, under the authority granted by Ordinance No. 95-138, the Department signed a one-year lease agreement with the winning bidder, JNJ, to farm the 43 acres.

Because JNJ is already the farming tenant under the one-year lease, the attached lease commences on August 1, 2013.

Jack Osterholt, Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 5, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(A)(2)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(2)
3-5-13

RESOLUTION NO. _____

RESOLUTION RELATING TO KENDALL-TAMIAMI EXECUTIVE AIRPORT; ACCEPTING THE HIGH BID OF JNJ GROWERS, INC., FOR $531.99 PER ACRE FOR A TOTAL OF $22,875.57 PER YEAR FOR FORTY-THREE ACRES OF FARM LAND AT THE AIRPORT; APPROVING FARMING LEASE AGREEMENT WITH JNJ GROWERS, INC., FOR SUCH ACREAGE FOR AN INITIAL FOUR-YEAR TERM WITH FIVE ONE YEAR EXTENSIONS THEREAFTER

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board accepts the bid of JNJ Growers, Inc. (JNJ) of $531.99 for each of the offered forty-three acres of land at Kendall-Tamiami Executive Airport for farming purposes for a total annual revenue to the Aviation Department of $22,875.57 per year; authorizes the Mayor or Mayor's designee to execute the attached farming lease agreement for an initial four-year term with five one-year extensions thereafter at the option of JNJ; and authorizes the Mayor or Mayor's designee to execute the termination provisions thereof.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

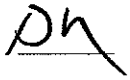
The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of March, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David M. Murray

Lease No. T-007334

Customer: JNJGR3102

LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA, AS LESSOR, AND JNJ GROWERS INC., AS LESSEE, AT KENDALL-TAMIAMI EXECUTIVE GENERAL AVIATION AIRPORT.

THIS LEASE AGREEMENT ("Agreement"), is made and entered into as of this **1st day** of **August , 2013** , by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County") and JNJ GROWERS INC., a Florida corporation ("Lessee").

WITNESSETH:

FOR, and in consideration of the premises and of the mutual covenants and agreement herein contained, the parties hereto agree as follows:

ARTICLE 1

Term and Premises

1.01 Term: The County hereby leases to the Lessee, and the Lessee hereby leases from the County, the premises described in Article 1.03 (Premises) hereof, for the purposes and uses set forth in Article 2 (Use of Premises) hereof, for a lease term of four (4) years from the date first written above Commencement Date. The term is cancelable by either party at any time without cause upon 180 days written notice.

1.02 Extension: The Lessee may request to extend the Agreement for up to five (5) additional one year terms by so advising the County no later than 180 days prior to the expiration date of the original five year term, and subsequently, 180 days prior to the expiration date of any succeeding one year term. Should the Lessee fail to notify the County within the time prescribed, or if the County does not approve the extension, the Agreement shall terminate at the end of its term.

1.03 Premises: The premises leased herein are located at Kendall-Tamiami Executive General Aviation Airport ("TMB"), and are more particularly described as follows and as shown on Exhibit A attached hereto and made a part hereof ("Premises"):

NORTH PARCEL (EFS #0011)

COMMENCE AT THE POINT OF BEGINNING; THENCE RUN S 04°04'8.13" E FOR A DISTANCE OF 1,700 FEET; THENCE RUN N 87°24'49.12" E FOR A DISTANCE OF 900 FEET; THENCE RUN N 04°03'19.13" W FOR A DISTANCE OF 1,420 FEET; THENCE RUN N 87°26'4.18" E FOR A DISTANCE OF 1,335 FEET; THENCE RUN N 29°28'54.94" W FOR A DISTANCE OF 315 FEET; THENCE RUN S 87°24'11.51" W FOR A DISTANCE OF 2,100 FEET, TO THE POINT OF BEGINNING.

The above-described parcel of land contains +/- 1,884,527 square feet or +/- 43 acres more or less.

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1.04 Modification of Premises: The Premises are subject to modification or deletion of a portion thereof, at the sole discretion of the Aviation Department of the County ("Department"), provided such modification or partial deletion does not significantly adversely impact the use of the Premises by the Lessee. This Agreement shall be administratively revised to reflect such modification or deletion of a portion of the Premises upon one hundred-eighty (180) days advance written notice to the Lessee by the Department.

1.05 Easements: The Agreement is subject to any and all easements, permits and/or rights-of-way now existing on the Premises.

ARTICLE 2
Use of Premises

2.01 Use: **The Lessee shall use the Premises for farming only.**

2.02 Special Provisions: In farming the Premises, the Lessee shall comply with the following special provisions:

(A) Lessee shall maintain the fence-line adjoining its premises controlling the growth of weeds and other vegetation.
(B) Crops remaining after harvesting will be plowed under.
(C) Upon termination of the lease, furrows must be leveled and wells sealed.
(D) Trash and other debris must be removed in a timely manner.
(E) Proper disposal of chemicals products must be adhered to.

ARTICLE 3
Rentals and Payments

3.01 Annual Rental: As annual rental for the lease of the Premises, the Lessee shall pay to the County ***$22,875.57*** in U.S. funds, on or before the effective date and each anniversary date thereafter without billing, at the office of the Department as set forth in Article 3.03. Said rental is computed as follows:

Land

43 acres @ *$531.99* per acre per year TOTAL: *$22,875.57 yearly* in advance.

Note: Agricultural property is exempt from State sales tax pursuant to s.212.031 Florida Statues.

3.02 Double Rental: In the event that the Lessee remains in possession of the Premises beyond the expiration or termination of this Agreement, the Lessee shall be bound by all of the terms and conditions of this Agreement to the same extent as if this Agreement were in full force and effect during the time beyond the expiration date of this Agreement, however during any such possession of the Premises as a holdover tenant after the County has demanded the return of the Premises, the Lessee shall be liable for double rentals for so long as the Lessee remains in possession after such demand, such rentals to be based upon the rental rates applicable from time to time in whole or in part to the Premise.

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3.03 Address for Payments: The Lessee shall pay, by mail, all rentals, fees and charges required by this Agreement to the following:

Miami-Dade County Aviation Department
Finance Division
P. O. Box 526624
Miami, Florida 33152-6624

Payments may be made by hand-delivery to the offices of the Department, Monday through Friday, except holidays, during normal working hours.

3.04 Late Payment Charge: In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Agreement, within ten (10) days after same shall become due, interest at the rates established from time to time by the Board of County Commissioners of Miami-Dade County, Florida (currently set at 1½% per month), shall accrue against the delinquent payment(s) from the original due date until the Department actually receives payment. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the right of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

3.05 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is $50.00 or less, THIRTY DOLLARS, if the face value of the dishonored check or draft is more than $50.00 and less than $300.00, FORTY DOLLARS, if the face value of the dishonored check or draft is $300.00 or more or FIVE PERCENT of the face value of such dishonored check or draft, whichever is greater, plus penalties imposed by law (F.S. 832.08 and 125.0105). Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department.

3.06 Security Deposit: **Not required**, the Lessee shall pay to the County, ***$22,875.57*** *yearly* in advance and in U.S. funds, on or before the effective date and each anniversary date thereafter without billing, at the office of the Department as set forth in Article 3.03.

ARTICLE 4
Maintenance and Repair by Lessee

4.01 Removal of Trash: The Lessee shall, at its sole cost and expense, remove from the Premises all trash and refuse which might accumulate and arise from its use of the Premises and the business operations of the Lessee under this Agreement.

4.02 Excavation of Land: No excavation of any of the land shall be made, and no soil or earth shall be removed from the Premises, without prior written approval from the Department.

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ARTICLE 5
Maintenance by County

The County shall have no maintenance responsibility whatsoever within the Premises or the fence-line adjoining its Premises.

ARTICLE 6
Regulations, Licenses and Permits

6.01 Rules and Regulations - General:

(A) The Lessee shall comply with all Ordinances of the County, including the Rules and Regulations of the Department, Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued hereunder, all additional laws, statutes, ordinances, regulations and rules of the Federal, State and County Governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and safety laws and regulations and Federal, State and County environmental laws.

(B) The Lessee agrees to permit the entry, at all reasonable times, of inspectors of the Department, the County's Department of Environmental Resources Management ("DERM"), or any Federal, State or County agency having jurisdiction over any law or requirement referenced in Article 6.01(A) (Rules and Regulations - General) above, to make inspections of the Premises to determine the Lessee's compliance therewith.

(C) Permits and Licenses:

(1) The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Lessee's operations and activities on the Premises have been obtained and are being fully complied with.

(2) Such permits and licenses shall include, but not be limited to, a Certificate of Use and Occupancy and any required Industrial Waste or Operating Permits from DERM. Prior to occupancy of the Premises and commencement of operations under this Agreement, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use and Occupancy and, as applicable, the appropriate operating Waste Permit(s). Upon written request of the Department, the Lessee shall provide to the Department copies of any permits and licenses, and applications therefore, which the Department may request.

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(D) Subject to the provisions of Article 6.02(D)(1) (Environmental Indemnities), the Lessee agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State or County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees, invitees, or trespassers have violated any law, ordinance, regulation, rule or directive described in Article 6.01 (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of this Article 6.01 (Rules and Regulations - General) above shall be included in every sublease, contract and other agreement, which the Lessee may enter into related to its operations and activities under this Agreement and that any such sublease, contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

ARTICLE 7
Alteration of Premises and Erection of Signs

7.01 Alterations: The Lessee shall not alter the Premises in any manner whatsoever without prior written approval of the Department. In the event the Lessee is given approval to make any alterations to the Premises, the Lessee shall fully comply with the terms and conditions contained in the Department's approval letter and a failure to do so shall constitute a default pursuant to Article 12.03 (Other Defaults) hereof.

7.02 Signage: The Lessee shall not erect, maintain or display any identifying signs or any advertising matter, of any type or kind which is visible to the public.

ARTICLE 8
Environmental Compliance

8.01 Definitions: For purposes of this Agreement, the following additional definitions apply:

(A) "Baseline Environmental Conditions" means the presence or release of Hazardous Materials, at, on, under, or from the Premises prior to Lessee's Occupancy Date, the presence or release of which was not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers. Solely for purposes of this Agreement, it shall be presumed that the Baseline Environmental Conditions consist of the conditions identified in any existing (as of the date of this Agreement) Miami-Dade County maintained records, including contamination assessment reports and any other technical reports, data bases, remedial action plans, the Baseline Audit or the presence, discharge, disposal or release of any other Hazardous Materials originating prior to the Occupancy Date that comes to be located on the Premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or trespassers.

(B) "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Lessee with respect to its operations at Miami International Airport or against or with respect to its operations at Miami International Airport or against or with respect to the Premises or any condition, use or activity on the Premises

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(including any such action against County), and any claim at any time threatened or made by any person against Lessee with respect to its operations at Miami International Airport or against or with respect to the Premises or any condition, use or activity on the Premises (including any such claim against County), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any applicable Environmental Requirement.

(C) "Environmental Law" means any applicable federal, state or local law, statute, ordinance, code, rule, or regulation, or license, authorization, decision, order, injunction, or decree, any of which may be issued by a judicial or regulatory body of competent jurisdiction, or rule of common law including, without limitation, actions in nuisance or trespass, and any judicial or agency interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C § 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C.§ 1251 *et seq.*; the Clean Air Act 42 U.S.C. § 7401 *et seq.*; the Toxic Materials Control Act 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; Chapters 403, 376 and 373, Florida Statutes; Chapters 24 and 25 of Miami-Dade County Code, and any other applicable local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

(D) "Environmental Requirement" means any Environmental Law, or any agreement or restriction entered into or applicable by law (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

With regard to any environmental agreements or restrictions entered into by MDAD, MDAD agrees to use reasonable efforts to apprise the Miami Airport Affairs Committee (the "MAAC"), which represents the interests of the airlines at the Airport, of any such agreements or restrictions and to obtain the MAAC's input into such items.

(E) "Hazardous Material" means any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a hazardous substance, a hazardous waste or pesticide, or otherwise classified as hazardous or toxic, in or pursuant to any applicable Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause contamination or a nuisance on the Premises, any adjacent Premises or a hazard to the environment or to the health or safety of persons on the Premises or Other Airport Property.

(F) "Initial Construction Period" means for any lease which contemplates construction or renovation for Premises not previously occupied in whole or in part by Lessee under this Agreement and/or any previous Agreement, a period of time not to exceed six (6) months commencing with the date on which Lessee breaks ground on the Premises for construction of foundations or commences such renovation.

(G) "Occupancy Date" means the date Lessee first entered, occupied or took possession of the Premises under any written or verbal agreement.

(H) "On" or "in" when used with respect to the Premises or any premises adjacent to the Premises, means "on, in, under, above or about."

(I) "Other Airport Property" means property on the Airport occupied or used by Lessee, or upon which Lessee performs operations, but which is not subject to a lease, sublease or other legal agreement governing the terms of Lessee's occupation, use or operations at such property.

(J) "Recognized Environmental Condition" shall have the meaning set forth in ASTM E 1527-05, Section 1.1.1, as such provision may be amended or superseded from time to time.

(K) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

(L) "Remediation" means any investigation, clean-up, removal action, remedial action, restoration, repair, response action, corrective action, monitoring, sampling and analysis, installation, reclamation, closure, or post-closure in connection with the suspected, threatened or actual release of Hazardous Materials.

(M) "Trespassers" means third parties who have entered the Premises and whose actions while on the Premises have resulted in Release of Hazardous Materials directly onto the Premises. Notwithstanding the foregoing, for purposes of this Agreement, Trespassers shall not include those third parties whose actions took place off of the Premises and which resulted in the presence of Hazardous Materials on the Premises due to the migration of Hazardous Materials from that off-Premises location.

8.02 Lessee's Industrial Classification: Lessee represents and warrants to County that Lessee's Standard Industrial Classification ("SIC") code number, as published in the most recent SIC Manual from the United States Office of Management and Budget, and as used on Lessee's Federal Tax Return is **N/A.**

8.03 Lessee's Acceptance of the Risks and Condition of Premises As-Is: Lessee agrees that the Premises shall be leased and delivered to Lessee in its current "as-is/with all faults" condition (but it is not intended by this provision that County be relieved from its duties expressly set forth in this Agreement or any other applicable agreement). Lessee hereby, warrants, covenants, agrees, and acknowledges that:

(A) Hazardous Materials may be present on the Premises and Other Airport Property. The County is currently engaged in a significant environmental remediation program at MIA.

(B) Under Article 8.06 below, Lessee is provided the opportunity to conduct an independent investigation of the Premises and the physical condition thereof, including the potential presence of any Hazardous Materials on or about the Premises. Lessee's report on the investigation, if any such report has been prepared, has been provided to the County and is listed in Tab B (Contamination Assessment Reports (CARS), Remedial Action Plans

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(RAPS) and other documents) attached to this Agreement. Whether Lessee has conducted such an investigation or not, Lessee is willing to proceed with this Agreement notwithstanding the environmental conditions of the premises of the properties surrounding the premises, subject to Lessee's right to terminate this Agreement as otherwise provided herein.

(C) Because of the possible presence of environmental contaminants on the Premises or other Airport property, County has made no express, implied, or other representations of any kind with respect to the suitability or usability of the Premises or other Airport Property, or any improvements appurtenant thereto, including, without limitation, the suitability or usability of any building materials, building systems, soils or groundwater conditions (due to the presence of Hazardous Materials in, on, under, or about the Premises or other Airport property), for Lessee's proposed or intended use, and Lessee has relied solely on Lessee's own inspection and examination of such matters.

(D) Except as to County's obligations set forth in this Article of elsewhere in this Agreement, Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises at the commencement of this Agreement may affect the suitability or usability of the Premises for Lessee's proposed or intended use. Lessee agrees that, except to the extent of County's Remediation obligations provided in this Article 8, or any other discharge, disposal or release of Hazardous Materials or violation of Environmental Requirements, caused by County, its agents, employees or contractors and except with respect to Baseline Environmental Conditions, County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises. Notwithstanding the foregoing, in no event shall County be liable to Lessee for damages relating to physical or personal injury, business interruptions relocation costs or any other cost (other than a cost for which County is liable under this Article 8) resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement.

8.04 Responsibilities for Hazardous Materials:

(A) Unless the parties agree otherwise in writing, the County shall conduct response actions mandated by existing Environmental Requirements applicable to the County for (i) Hazardous Materials disclosed in the Lessee Audit to the extent required by Article 8.06 and (ii) Baseline Environmental Conditions, provided however that:

1) To the extent this Agreement covers Premises not previously occupied by Lessee and if this Agreement contemplates construction or renovation by the Lessee, any Hazardous Material discovered during the Initial Construction Period as defined in Article 8.01(F), shall be presumed to be a Baseline Environmental Condition under this Agreement except to the extent the Aviation Department demonstrates to the satisfaction of Lessee by written notice setting forth the Aviation Department's explanation as to why the Hazardous Material originated from a discharge, disposal or release that was caused by Lessee, Lessee's agents, employees, contractors, invitees or Trespassers. Should Lessee determine that such a demonstration has not been made to Lessee's satisfaction, County may invoke the dispute resolution provision of 8.16. Until such time as the parties reach an agreement or such time as the dispute is

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otherwise resolved, responsibility for such Hazardous Material shall remain with the Aviation Department.

2) The extent this Agreement covers premises previously occupied by Lessee, and except for Baseline Environmental Conditions, Remediation of any Hazardous Material discovered on the Premises shall be the responsibility of the Lessee, except to the extent that Lessee demonstrates to the satisfaction of Aviation Department Management by written notice setting forth Lessee's explanation as to why the Hazardous Material originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees; (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the date upon which Lessee first occupied the premises and not caused by Lessee or Lessee's agents, employees, contractors, invitees or Trespassers; or (3) a discharge, disposal or release caused by the County, its agents, employees, contractors or any third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 8.16. Until such time as the parties reach an agreement or such time as the dispute is otherwise resolved, responsibility for such Hazardous Material shall remain with Lessee.

(B) County's responsibility for Remediation under this Article 8.04 shall be limited to the Recognized Environmental Conditions required to be remediated under applicable Environmental Requirements. If County is permitted to leave any Hazardous Material in place under applicable Environmental Requirements, County shall have the option of so doing, unless a governmental authority requires at any time the removal of Hazardous Materials for Lessee to be able to continue with construction or occupancy of the Premises. The County shall notify Lessee of any such decision to leave Hazardous Material in place.

(C) (1) To the extent they exist, the County has made available to Lessee a listing of contamination assessment reports, remedial action plans and other documents regarding any soil and groundwater contamination at the Premises. Such documentation is listed in Tab B to this Agreement. The County may have already installed or may have plans to install remediation systems to clean up the contamination described in such reports to the extent they exist. Lessee agrees that during the term of the Agreement, County's authorized representatives shall have the right to enter the Premises in order to operate, inspect, maintain, relocate and replace any such installed systems. Without limiting the generality of the foregoing, the County shall have the right to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort; and (c) undertake such related activities as the Aviation Department or other governmental authorities may require or recommend, utilizing such methods as the Aviation Department or the applicable governmental authorities may elect in order to remediate the contamination described in any such reports.

(2) County shall utilize reasonable efforts to minimize any disturbance of the Lessee's use of the Premises caused by any Remediation it undertakes and shall provide Lessee prior written notice of such Remediation. Lessee agrees that it shall not unreasonably interfere with or obstruct such Remediation. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remediation to be performed, the Lessee will effect such relocation at no expense to the County. Attached to Tab A (Leased Space Exhibits) is a site sketch of the Premises describing any existing or currently planned Remediation equipment and depicting the current and proposed future location of such equipment.

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(3) If Remediation equipment or materials need to be temporarily stored in a secure location on the Premises, the Lessee will provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County, provided, however, that Lessee shall bear no liability and otherwise shall have no responsibility for any theft of and/or damage to such equipment or materials so stored, to the extent Lessee took reasonable measures to prevent, such theft and/or damage and such theft and/or damage was not caused by Lessee or Lessee's employees. To the extent that water and electrical service within the Premises are not metered and the Lessee does not pay for such services directly, the Lessee will provide the County with water and electrical service from the Premises in connection with the Remediation, without charge. The Lessee acknowledges the Remediation may be conducted at the locations depicted on the site sketch attached to Tab A (Leased Space Exhibits) at any time during the term of the Agreement and may continue until such time as a no further action letter is obtained from the appropriate regulatory authorities.

8.05 Baseline Audit: The County has provided Lessee with a copy of an environmental audit of the Premises, conducted to identify any Recognized Environmental Conditions associated with the Premises, which audit may include analyses of soil and groundwater samples (the initial "Baseline Audit"). Except to the extent Lessee previously occupied the Premises, the County shall be responsible for any Recognized Environmental Conditions within the meaning of ASTM E 1527-05, or most recent version, disclosed by the Baseline Audit. Except to the extent Lessee previously occupied the Premises, Lessee may terminate this Agreement within sixty (60) days of receipt of the Baseline Audit if Lessee, in its sole discretion, determines that the Recognized Environmental Conditions disclosed in such Baseline Audit are unacceptable. To the extent Lessee previously occupied the Premises, Lessee, subject to its right to invoke the dispute resolution provision of 8.16, shall be responsible for all Recognized Environmental Conditions disclosed in the Baseline Audit, which are not otherwise Baseline Environmental Conditions, unless Lessee demonstrates to the County's satisfaction that the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents employees, contractors or invitees; or (2) a discharge, disposal or release of Hazardous Material on the Premises prior to Lessee's first occupancy of the Premises and not caused by Lessee, Lessee's agents, employees, contractors, invitees, or Trespassers.

8.06 Lessee Audit: Lessee, at its sole cost and expense, shall have the right to conduct, within sixty (60) days from the receipt of the Baseline Audit, an environmental inspection of the Premises (the "Lessee Audit"), through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. If Lessee elects to conduct a Lessee Audit, it shall furnish County a copy of the Lessee Audit within thirty (30) days of Lessee's receipt of the Lessee Audit. The purpose of the Lessee Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions not identified in the Baseline Audit, any previous audits, or any contamination assessment reports or remedial action plans, to the extent any such documents exist. Within thirty (30) days of receipt of such Lessee Audit, the County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of any subsurface conditions described in the Lessee Audit. If the Lessee Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in any contamination assessment reports, remedial action plans, or the Baseline Audit, and which are not otherwise considered Baseline Environmental Conditions under the term of this Agreement, then, except to the extent that Lessee previously occupied the Premises, the County, at its option, shall: (i) allow Lessee to terminate the Agreement, without penalty, within sixty (60) days of receipt of such notice or dispute from the County; or (ii) notify Lessee that it has agreed to be responsible

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for such Recognized Environmental Conditions and delineated subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in any contamination assessment reports, remedial action plans and the Baseline Audit. If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate, Lessee's failure to terminate shall constitute a waiver of 1) Lessee's rights to terminate its obligations under this Agreement as to any findings in such Lessee Audit, except as to its right to cancel the lease on thirty (30) days notice under Article 1.01 (B) and, 2) as provided in Article 8.04, any claim it may have against the County with respect either to Recognized Environmental Conditions and subsurface contamination disclosed in such Lessee Audit. To the extent the Lessee previously occupied the Premises, Lessee shall be responsible for all Recognized Environmental Conditions disclosed in the Lessee Audit that are not Baseline Environmental Conditions unless Lessee demonstrates to the satisfaction of Aviation Department Management by written notice setting forth Lessee's explanation why the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors, or invitees; (2) a discharge, disposal or release of Hazardous Material on the Premises prior to the Occupancy Date and not caused by Lessee or Lessee's agents, employees, contractors, invitees or Trespassers; or (3) a discharge, disposal or release caused by County or third party. Should the Aviation Department determine that such a demonstration has not been made to Aviation Department's satisfaction, Lessee may invoke the dispute resolution provision of 8.16 Until such time as the parties reach an agreement or until such time as the dispute is otherwise resolved, responsibility for such Recognized Environmental Condition shall remain with Lessee.

8.07 Environmental Maintenance of Premises: Except for the obligations of the County under this Article 8, Lessee shall, at its sole cost and expense, keep, maintain and use the Premises, and operate within the Premises at all times, in compliance with all applicable Environmental Laws, and shall maintain the Premises in good and sanitary order, condition, and repair.

8.08 Lessee's Use of Hazardous Materials: Tab C (Lessee's Hazardous Material List) is a complete list of all Hazardous Materials which Lessee currently intends to use on the Premises or Other Airport Property during the term of the Agreement which have been approved by the County, and the use, storage and transportation of which on or about the Premises shall not be subject to County's approval or objections. Except for those Hazardous Materials listed on Tab C, Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises or Other Airport Property without first providing the County thirty (30) days written notice prior to bringing such Hazardous Material upon the premises. To the extent certain Hazardous Materials are needed to be used by Lessee on a non-routine basis, such as for emergency repairs, Lessee may provide such notice within twenty-four (24) hours of bringing such Hazardous Material upon the premises. Notwithstanding the foregoing, County may object to the use of any previously-approved Hazardous Material should County reasonably determine that the continued use of the Hazardous Material by Lessee presents a material increased risk of site contamination, damage or injury to persons, Premises, resources on or near the Premises of Other Airport Property, or noncompliance due to a change in regulation of such Hazardous Material under applicable Environmental Law. Upon County's objection, Lessee shall immediately remove the Hazardous Material from the site. This section 8.08 shall not apply to Hazardous Materials which are not used, generated, treated or disposed of by Lessee but which are otherwise transported by Lessee solely in the course of Lessee's business, such as cargo operations, and for which Lessee has no knowledge as to the identity of such hazardous materials prior to such transport. County's objection or failure to object to the use, storage, generation, treatment, transportation, or disposal of Hazardous Material under this paragraph, or the

exclusion of certain Hazardous Materials under this paragraph, shall not limit or affect Lessee's obligations under this Agreement, including Lessee's duty to remedy or remove releases or threatened releases; to comply with applicable Environmental Law and/or Environmental Requirements relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County against any harm or damage caused thereby. Lessee shall promptly and completely answer periodic questionnaires from the County concerning Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials under this Agreement.

8.09 Entry by County:

(A) Notwithstanding any other right of entry granted to County under this Agreement, and subject to the requirements set forth in Article 8.09(B), MDAD shall have the right, at its own expense and upon reasonable notice, to enter the Premises or to have consultants enter the Premises throughout the Term of this Agreement for the purposes of: (1) determining whether the Premises are in conformity with applicable Environmental Law; (2) conducting an environmental review or investigation of the Premises; (3) determining whether Lessee has complied with the applicable environmental requirements of this Agreement; (4) determining the corrective measures, if any, required of Lessee to ensure the safe use, storage, and disposal of Hazardous Materials; or (5) removing Hazardous Materials (except to the extent used, stored, generated, treated, transported, or disposed of by Lessee in compliance with applicable Environmental Requirements and the terms of this Agreement). Lessee agrees to provide access and reasonable assistance for such inspections. MDAD shall use its best efforts to reasonably minimize interruptions of business operations on the Premises.

(B) Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs of other machinery for the purpose of obtaining laboratory samples of environmental conditions or soil or groundwater conditions. Lessee shall have the right to collect split samples of any samples collected by MDAD, MDAD shall not be limited in the number of such inspections during the Term of this Agreement MDAD will conduct such inspections during Lessee's normal business hours, but MDAD may conduct such inspections in other than normal business hours if the circumstances so require. For inspections conducted by MDAD, MDAD agrees to provide Lessee with reasonable notice (not less than twenty four (24) hours) prior to inspecting the Premises; provided however, that such notice period shall not apply under circumstances in which MDAD reasonably determines that there exists an immediate threat to the health, safety, or welfare of any persons. Based on the results of such inspections, should MDAD reasonably determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Lessee shall, in a timely manner, at its expense, remove such Hazardous Materials in a manner not inconsistent with applicable Environmental Law and otherwise comply with the reasonable recommendations of MDAD and any regulatory authorities related to the results of such inspections. The right granted to MDAD herein to inspect the Premises shall not create a duty on MDAD's part to inspect the Premises, nor liability of MDAD for Lessee's use, storage, or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith. MDAD shall provide the results of such inspections to the Lessee in a timely manner if requested to do so in writing. Nothing herein shall be construed to limit, restrain, impair or interfere with County's regulatory authority to conduct inspections and/or the manner in which it conducts such inspections. Lessee shall not be liable or otherwise responsible for any property damage to the Premises or injury to any person caused by County, its agents or consultants during County's inspection under this Section 8.09.

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8.10 Permits and Licenses: The Lessee warrants that it will secure at the times required by issuing authorities all applicable permits or approvals that are required by any governmental authority having lawful jurisdiction to enable Lessee to conduct its obligations under this Agreement. Upon written request, Lessee shall provide to County copies of all permits, licenses, certificates of occupancy, approvals, consent orders, or other authorizations issued to Lessee under applicable Environmental Requirements, as they pertain to the Lessee's operations on or use of the Premises or Other Airport Property.

8.11 Notice of Discharge to County:

(A) In the event of: (i) the happening of any material event involving the spill, release, leak, seepage, discharge or clean up of any Hazardous Material on the Premises or Other Airport Property in connection with Lessee's operation thereon; or (ii) any written Environmental Claim affecting Lessee from any person or entity resulting from Lessee's use of the Premises or Other Airport Property, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. If County is reasonably satisfied that Lessee is not promptly commencing the response to either of such events. County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem reasonably necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises, which if true, could result in an order, suit or other action against the County. If Lessee is unable to resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Agreement and shall be payable by Lessee upon demand, except to the extent they relate to a Baseline Environmental Condition.

(B) With regard to any reporting obligation arising out of Lessee's operations or during the Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, Miami-Dade County Department of Environmental Resources Management, and the United States Environmental Protection Agency, as appropriate, with regard to any and all applicable reporting obligations while simultaneously providing written notice to County.

(C) Within sixty (60) days of execution of this Agreement, Lessee shall submit to County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of Hazardous Materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.

8.12 Reports to County: For any year in which any Hazardous Materials have been used, generated, treated, stored, transported or otherwise been present on or in the Premises, (or on or in other Airport property for purposes related to Lessee's operations on the Premises), Lessee shall provide County with a written report listing: the Hazardous Materials which were present on the Premises or other Airport property; all releases of Hazardous Material that occurred or were discovered on the Premises or other Airport property and which were required to be reported to regulatory authorities under applicable Environmental Laws; all enforcement actions related to such Hazardous Materials, including all, consent agreements or other non-privileged documents relating to such enforcement actions during that time period. In addition, Lessee shall provide County with copies of any reports filed in accordance with the Emergency Planning and Community Right to Know Act (EPCRA) and shall make available for review upon request by County copies of all manifests for hazardous wastes generated from operations on the Premises. Lessee shall provide the report required under this section to the County by April 1 of each year

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for the preceding calendar year.

8.13 Periodic Environmental Audits: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor its continued compliance on the Premises with all applicable Environmental Laws, which system shall include, no less than once each year a detailed review of such compliance (the "Environmental Audit Exhibit E") by such consultant or consultants as County may approve, which approval shall not be unreasonably withheld, delayed or conditioned. Alternatively, if the Aviation Department approves, which approval shall not be unreasonably withheld, delayed, or conditioned, such Environmental Audit may be conducted by Lessee's personnel but in either case Lessee shall provide County with a copy or summary of its report of its annual Environmental Audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits" which shall include in its scope the items listed in Tab C (Lessee's Hazardous Material List) hereto or other recognized format approved by County. If the Environmental Audit indicates any unresolved violation of any applicable Environmental Law and/or Environmental Requirements, Lessee shall, at the request of County, provide a detailed review of the status of any such violation within thirty (30) days of the County's request.

8.14 Remediation of Hazardous Material Releases: If Lessee or Lessee's agents, employees, contractors, invitees or trespassers cause any Hazardous Materials to be released, discharged, or otherwise located on or about the Premises or Other Airport Property during the term of this Agreement ("Hazardous Material Release"), Lessee shall promptly take all actions, at its sole expense and without abatement of rent, as are reasonable and necessary to return the affected portion of the Premises or Other Airport Property and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release in a manner not inconsistent with applicable Environmental Law. County shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Lessee proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work; (ii) any reports or disclosure statements to be submitted to any governmental authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any governmental authorities. The County's approvals shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, County's prior consent shall be not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Lessee's best efforts, it is not practicable to obtain County's consent before taking remedial action to abate such immediate threat, provided that: (a) Lessee shall notify County as soon as possible and shall thereafter obtain County's consent as otherwise provided in this paragraph; and (b) Lessee shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this paragraph. In addition to any rights reserved by County in this Agreement, County shall have the right, but not the obligation, to participate with Lessee, Lessee's consultants and Lessee's contractors in any meetings with representatives of the governmental authorities and Lessee shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all applicable Environmental Laws. The County's consent to any remedial activities undertaken by Lessee shall not be withheld so long as County reasonably determines that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County. Lessee's obligations in this section do not apply to Baseline Environmental Conditions.

8.15 Indemnity: Lessee shall indemnify, defend (with counsel reasonably satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all loss, cost, damage, expense

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(including reasonable attorneys' fees), claim, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Premises or Other Airport Property and caused by Lessee, Lessee's agents, employees, contractors, invitees or trespassers. This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises or Other Airport Property; (d) damages for the loss or restriction on use of the Premises or Other Airport Property; (e) sums paid in settlement of claims; (f) reasonable attorneys' fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment, but shall not extend to such claims, payment, diminution, damages, sums, fess or costs to the extent caused (i) solely by an act of God or (ii) by the negligent or willful misconduct of the County, its officers, employees, contractors or agents. For any legal proceedings or actions initiated in connection with the Hazardous Materials Release, County shall have the right at its expense but not the obligation to join and participate in such proceedings or actions in which the County is a named party, and control that portion of the proceedings in which it is a named party. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release; provided, however, claims for which Lessee may be liable pursuant to this Article 8.15 shall not be settled without Lessee's consent. Any costs or expenses incurred by County for which Lessee is responsible under this paragraph or for which Lessee has indemnified County: (i) shall be paid to County on demand, during the term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Lessee on demand. Lessee's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assignees and inure to the benefit of County's successors and assignees. Notwithstanding any other provision of this Agreement, this section 8.15 does not apply to Baseline Environmental Conditions or a discharge, disposal or release caused by the County, its officers, employees, contractors or agents.

(A) This indemnity specifically includes the direct obligation of Lessee to perform, at its sole cost and expense, any remedial or other activities required or ordered by court or agency having competent jurisdiction over the subject matter, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of Hazardous Materials.

(B) In addition, because costs of Hazardous Materials discharges are passed on to airlines through the residual rate charging mechanism at Miami International Airport and the charges to Lessee will be increased to offset such costs. Lessee agrees in order to minimize its obligations in this regard to use best efforts to assist the Aviation Department in responding to Hazardous Materials spills in or Airport property reasonably close to the Premises used by Lessee by making Lessee's remediation equipment and personnel available for such emergency remediation activity. However, Lessee may provide such assistance only at the direct request of the Aviation Department and only if Lessee's remediation equipment is intended to be utilized for the Hazardous Material spill at issue and only if Lessee's personnel have been trained to respond to the Hazardous Material spill at issue. If Lessee is directed to perform any remedial work under this Article 8.15(B) for which it is later determined that Lessee is not responsible, the Aviation Department shall reimburse Lessee for all costs

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associated with or arising out of Lessee's performance of such remedial work. Lessee shall cooperate with the Aviation Department in any subsequent effort by the Aviation Department to recover from the responsible parties all costs involved with the remediation effort that utilized Lessee's equipment and personnel. Lessee shall perform all such work in its own name in accordance with applicable laws. Lessee acknowledges that the County's regulatory power in this regard is independent of the County's contractual undertakings herein, and nothing herein shall affect the County's right in its regulatory capacity to impose its environmental rules, regulations, and authorities upon the Lessee in accordance with the law.

(C) In the event Lessee fails to perform its obligations in Article 8.15(A) above, and without waiving its rights hereunder, County may, at its option, perform such remedial work as described in Article 8.15(A) above, and thereafter seek reimbursement for the costs thereof. In accordance with this Article 8, Lessee shall permit County or its designated representative access to the Premises areas to perform such remedial activities.

(D) Whenever County has incurred costs described in this section as a result of the failure of Lessee to perform its obligations hereunder, Lessee shall, within thirty (30) days of receipt of notice thereof, reimburse County for all such expenses together with interest at the rate of 1 ½ % per month on the outstanding balance commencing on the thirty-first day following Lessee's receipt of such notice until the date of payment.

(E) To the extent of Lessee's responsibility under this Article and without limiting its obligations under any other paragraph of this Agreement, and except to the extent of County's responsibility for environmental conditions set forth in this Article 8, Lessee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual Hazardous Materials contamination on the Premise. Lessee's responsibility under this paragraph includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders. Lessee shall assume, pursuant to the indemnity provision set forth in this Article 8, any liabilities or responsibilities which are assessed against County in any action described under this paragraph.

8.16 Dispute Resolution: County and Lessee agree that any dispute between them relating to this Article 8 will first be submitted, by written notice, to a designated representative of both County and Lessee who will meet at County's place of business or other mutually agreeable location, or by teleconference, and confer in an effort to resolve such dispute. Any decision of the representatives will be final and binding on the parties. In the event the representatives are unable to resolve any dispute within ten (10) days after submission to them, either party may refer the dispute to mediation, or institute any other available legal or equitable proceeding in order to resolve the dispute.

8.17 Waiver and Release: Lessee, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges County, its principals, officers, directors, employees, agents, representatives and any other person acting on behalf of the County, and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action,

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demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any its heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future physical characteristic or condition of the Premises, including, without limitation, any Hazardous Material, in at, on, under or related to the Premises, or any violation or potential violation of any Environmental Law applicable thereto; provided, however, this Article 8.17 shall not constitute a waiver or release of any obligation of County under this Article 8. Lessee acknowledges that County would not enter into this Agreement without Lessee's agreement to the waiver and release provided herein.

8.18 No Waiver of Rights, Causes of Actions or Defenses. Notwithstanding any language in this Agreement, including without limitation Articles 8.03, 8.04, 8.05, 8.06, 8.14, 8.15 and 8.16, Lessee does not agree to waive or release any rights, causes of action or defenses it may have against Miami-Dade County or any other party related to allegations made by the County in (i) Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit, and (ii) a letter dated April 9, 2001, to Lessee and others (who are referred to as "responsible parties" or "RPs"). Nothing herein shall be construed to limit or expand upon any releases previously granted to or exchanged between the parties as a result of judgments or settlements obtained in proceedings between the parties, including, without limitation, settlements in bankruptcy or settlements entered under Case No. 01-8758 CA 25 which has been filed by the County in the Florida Circuit Court of the Eleventh Judicial Circuit.

8.19 Surrender of Premises: Lessee shall surrender the Premises used by Lessee to County upon the expiration or earlier termination of this Agreement free of debris, waste, and Hazardous Materials used, stored, or disposed of by Lessee or its agents, employees, contractors, invitees or Trespassers, or otherwise discharged on the Premises or Other Airport Property for which Lessee is responsible during the term of this Agreement. The Premises shall be surrendered in a condition that complies with all applicable Environmental Requirements, and such other reasonable environmental requirements as may be imposed by County. Lessee shall not be responsible under this section 8.19 to the extent of County's obligations under this Article 8.

8.20 Breach: Any breach by Lessee of any provision of this Article 8 shall, after notice and a reasonable opportunity for Lessee to cure, constitute a default of the Agreement and shall entitle County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law.

8.21 Survivability of Terms: the terms and conditions of this Article 8, including the indemnity, waiver, and release, shall survive the termination of this Agreement.

8.22 Right to Regulate: As provided for in Article 20 of this Agreement, nothing within this Article 8 shall be construed to waive or limit, restrain, impair or interfere with the County's regulatory authority.

ARTICLE 9
Assignment and Subletting

9.01 Assignment and Transfer: The Lessee shall not, in any manner, assign, transfer, mortgage, hypothecate, encumber or otherwise convey an interest in this Agreement, or authorize others to exercise the rights granted to the Lessee herein without the prior express written approval of the County.

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9.02 Subletting: The Lessee shall not sublet any portion of the leased Premises without the prior express written approval of the Department. Any agreement which permits another party to farm any portion of the leasehold Premises for any period in excess of six (6) months shall be considered a sublease for the purposes of this Article 9.02 and shall be submitted, in writing, for Department approval at least forty-five (45) days prior to the start of the sublease agreement.

The Lessee shall not charge or receive, directly or indirectly, as consideration for any sublease, usage or operating agreement from any person, firm or corporation, any amount in excess of the rental rate established by this agreement, and paid by the Lessee, for such premises, or the subleased portion thereof, plus an amount not to exceed ten percent (10%).

Further, any such subleases shall be subject to the same conditions, obligations and terms as set forth herein, including as a minimum, but not limited to, requirements for compliance with Airport Rules and Regulations and applicable laws and indemnification to the County. Notwithstanding anything herein contained to the contrary, in the event of an approved sublease, the Lessee shall remain fully liable to the County for fulfilling all obligations, conditions and terms of this Agreement, throughout its entire term.

ARTICLE 10
Indemnification and Hold Harmless

Subject only to the limitations contained in Article 6.02(D) (Environmental Indemnities), the Lessee shall protect, defend, using attorneys reasonably acceptable to the County, and hold the County and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including the leased Premises, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees, through all levels of trial and appellate proceedings), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the leased Premises or the acts or omissions of officers, agents, employees, contractors, subcontractors, licensees, or invitees of the Lessee regardless of where the injury, death, or damage may occur, except to the extent such injury, death or damage is caused (i) solely by an Act of God, or (ii) by the negligence or willful misconduct of the County, its officers, employees or agents. The County shall give the Lessee reasonable notice of any such claims or actions. The provisions of this Article 9 shall survive the expiration or early termination of this Agreement.

ARTICLE 11
Insurance

11.01 Insurance Required: In addition to such insurance as may be required by law, the Lessee shall maintain, without lapse or material change, for so long as it occupies the Premises, the following insurance:

(A) Commercial General Liability Insurance on a comprehensive basis, including Contractual Liability, to cover the Lessee's Premises and operations, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage.

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(B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Agreement in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage's required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Lessee under this Agreement. All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "A-" as to financial strength, and no less than "Class VII" as to financial size in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of MDAD Risk Management.

11.02 Insurance Certificates Required: Prior to the commencement of operations hereunder and annually thereafter, the Lessee shall furnish or cause to be furnished certificates of insurance to the Department which certificates shall clearly indicate that:

(A) The Lessee has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;

(B) The policy cancellation notification provisions specify at least 30 days advance written notice of cancellation to the County; and

(C) The County is named as an additional insured with respect to the Lessee's commercial general liability policies.

On said insurance certificates, unless specifically shown to be excluded thereon, commercial general liability coverage shall include contractual liability.

The County reserves the right to require the Lessee to obtain and maintain such reasonably amended insurance coverage as it deems necessary or desirable, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective 30 days after such notice.

11.03 Compliance: Compliance with the requirements of this Article 12 (Insurance) shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.

11.04 Right to Examine: The Department reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection at the offices of the Department.

11.05 Personal Property: Any personal property of the Lessee or of others placed in the Premises and Airport shall be at the sole risk of the Lessee or the owners thereof, and the County shall not be liable for any loss or damage, except to the extent such loss or damage was caused by the sole active

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negligence of the County, as limited by Section 768.28, Florida Statutes.

ARTICLE 12
Use of Public Facilities

The County grants to the Lessee, to the extent necessary or reasonably necessary, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the roads of egress and ingress, service roads and such other facilities and improvements as may be now in existence or hereafter constructed for the use of persons lawfully using the Premises; provided, however, that such usage shall be subject to the payment of nondiscriminatory fees and other charges established by the County. Nothing herein contained shall grant to the Lessee the right to use any leasable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein.

ARTICLE 13
Termination

13.01 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees and charges required to be paid herein when due shall constitute a default, and the County may, at its option terminate this Agreement after five calendar days notice in writing to the Lessee unless the default be cured within the notice period.

13.02 Insurance Defaults: The County shall have the right, upon 5 calendar days written notice to the Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 10 hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such termination shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice period.

13.03 Other Defaults: The County shall have the right, upon 30 calendar days written notice to the Lessee, to terminate this Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period, or, if correction cannot reasonably be completed

within such 30 day period, in the sole discretion of the Department, the Lessee has commenced substantial corrective steps within such 30 day period and diligently pursues same to completion:

(A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage.

(B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein, by the Lessee.

13.04 Actions at Termination:

(A) The Lessee shall vacate, quit, surrender up and deliver the Premises to the County on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall remove all of its personal property from the Premises. Any personal property of the Lessee

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not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within 30 days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.

(B) The Lessee shall, at its expense, take all actions required by Federal, State and local laws, regulations or codes to remove from the Premises any hazardous substance or environmental contaminant, whether stored in drums, or found in vats, containers, distribution pipe lines, or the like. All such substances and contaminants shall be removed by the Lessee in a manner approved and authorized by such Federal, State or local laws, regulations or codes.

(C) If the County advises the Lessee that it has reasonable grounds to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises, during the term of this Agreement or during the terms of any prior leases between the Lessee and the County for the same or substantially the same Premises, then the Lessee at its expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release.
The Lessee shall comply with the recommendations and conclusions, contingent upon County approval, of such consultant regarding environmental cleanup efforts that may be required, and shall comply with any other clean up requirements imposed on the Lessee by Federal, State or local law, regulations or codes.

(D) Notwithstanding any other provisions of this Agreement, the Lessee shall have no liability to the Aviation Department for any violation of environmental law, which is attributable to the acts, or omissions of any person other than the Lessee, its agents, employees, invitees, contractors or trespassers (nor shall such violations constitute a default or breach of this Agreement). Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or County law.

13.05 Lien Upon Personal Property: In the event of termination for default or upon termination of this Agreement by its term, the County shall have a lien upon all personal property of the Lessee on the Premises to secure the payment of any unpaid rentals, fees and charges accruing under the terms of this Agreement.

13.06 Right to Show Premises: At any time after the Lessee has been given notice of termination or default, pursuant to this Article 12 (Termination) or other applicable provisions of this Agreement, the County shall have the right to enter on the Premises for the purpose of showing the Premises to prospective tenants or users.

ARTICLE 14
This Article Intentionally Left Blank

ARTICLE 15
Nondiscrimination

15.01 Employment Discrimination: The Lessee shall not discriminate against any employee or

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applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry, sexual orientation or disability. The Lessee shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

15.02 Nondiscriminatory Access to Premises and Services: The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, sex, national origin, disability, sexual orientation or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, sex, national origin, disability, sexual orientation or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the improvements; and (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation, as amended from time to time.

15.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Articles 14.01 (Employment Discrimination) and 14.02 (Nondiscriminatory Access to Premises and Services) above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to Article 12.03 (Other Defaults) hereof.

15.04 Affirmative Action and Disadvantaged Business Enterprise Programs: The Lessee agrees that in the event the provisions of 49 CFR Part 23, Disadvantaged Business Enterprises (DBE) and 14 CFR Part 152, Affirmative Action Employment Programs, are applicable to the Lessee under this Agreement, it shall comply with all requirements of the Department, the Federal Aviation Administration and the U. S. Department of Transportation. These requirements may include, but not be limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, keeping of certain records of good faith compliance efforts, and the submission of various reports, including, if directed by the Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises. Failure to comply with these requirements shall constitute a default hereunder and be grounds for termination of this Agreement. In the event it has been determined, in accordance with applicable regulations, that the Lessee has defaulted in the requirement to comply with this section, and the Lessee thereafter fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Lessee, to terminate this Agreement pursuant to Article 13.03 (Other Defaults) hereof.

ARTICLE 16
Security and Special Provisions

The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises and control of access through the Premises by persons and vehicles. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises, equipment and property and access through the Premises shall be the sole responsibility of the Lessee and shall involve no cost to the County. Furthermore, the Lessee shall pay its

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fair share of the cost of any security measures for its leasehold and operations that may be deemed necessary by Federal, State, and local agencies having jurisdiction over the airport.

ARTICLE 17
Control of Employees

17.01 Control of Employees: The Lessee shall properly control the actions of its employees at all times that said employees are working on the Airport, ensuring that any interaction with other airport users is courteous.

17.02 Employee Covenants Violations: In the event the Lessee is in default of the covenants in Article 16.01 (Control of Employees) for failure to properly control its employees, the Lessee understands that the County shall have the right to require the Lessee to take immediate action to correct the discrepancy

ARTICLE 18
Civil Actions

18.01 Governing Law; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida, and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

18.02 Notice of Commencement of Civil Action: In the event that the County or the Lessee commence a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the County and the Lessee agree to waive the procedure for initial service of process. The County and the Lessee agree to submit themselves to the jurisdiction of the court in which the action has been filed whenever service has been made in the following manner:

(A) Upon the County: by Certified Mail, Return Receipt Requested, sent to (I) the party indicated in Article 19.06 (Notices) on behalf of the County and (ii) with a copy to the County Attorney, Aviation Division, P.O. Box 592075, Miami, FL 33159.

(B) Upon the Lessee: by personal service or by Certified Mail, Return Receipt Requested, upon the party indicated in Article 19.06 (Notices) on behalf of the Lessee, with a copy to whatever attorney the Lessee has designated in writing, if any.

In the event that the County and/or the Lessee raise an objection to service of initial pleadings as provided for herein, and the trial court overrules such objection, the objecting party shall pay liquidated damages (attorney's fees) in the amount of $250.00 to plaintiff in such action, prior to answering the complaint.

18.03 Registered Office/Agent; Jurisdiction: Notwithstanding the provisions of Article 17.02 (Notice of Commencement of Civil Action), and in addition thereto, the Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged

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breach of this Agreement.

ARTICLE 19
Trust Agreement

19.01 Incorporation of Trust Agreement by Reference: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement dated as of the 15th day of December, 2002, by and between the County and the JPMorgan as Trustee and Wachovia National Bank as Co-Trustee, (the "Trust Agreement") which Trust Agreement is incorporated herein by reference thereto, shall prevail and govern in the event of any conflict or inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement is available for inspection in the offices of the Department during normal working hours.

19.02 Adjustment of Terms and Conditions: If, at any time during the term of this Agreement, a court or Federal Agency of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the County by the Lessee or by other Lessees under other Agreements of the County for the Lease or use of facilities used for similar purposes, are unjustly discriminatory, the County shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals, fees and charges required to be paid under this Agreement in such a manner as the County shall determine is necessary and reasonable so that the rentals, fees and charges payable by the Lessee and others shall not thereafter be unjustly discriminatory to any user of like facilities and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions including the adjustment or rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

19.03 Lessee Right to Terminate: In the event the terms and conditions of this Agreement, including the rentals, fees and charges payable hereunder, have been substantially modified pursuant to Article 18.02 (Adjustment of Terms and Conditions) above, the Lessee, at any time within one year following the effective date of such modification may terminate this Agreement by giving ninety days written notice to the County, without liability by any party to any other party.

ARTICLE 20
Other Provisions

20.01 No Representation: The County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that the County will not be responsible for any loss, damage or costs which may be incurred by the Lessee by reason of any such physical condition.

20.02 Headings: Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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20.03 Interference: The Lessee further expressly agrees to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an airport hazard.

20.04 Authorized Uses Only: The Lessee shall not use or permit the use of the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the County on, or invalidate, any insurance policies of the County or any policies of insurance written on behalf of the Lessee under this Agreement.

20.05 Binding Effect: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

20.06 Notices: All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, to the parties as follows:

As to the County or Aviation Department:

Director
Miami-Dade County Aviation Department
P. O. Box 025504
Miami, Florida 33102-5504

As to the Lessee:

JNJ GROWERS INC.
16070 SW 153RD AVE
MIAMI, FL.33187

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representative of the Lessee.

20.07 Rights Reserved: Rights not specifically granted the Lessee by this Agreement are reserved to the County.

20.08 Rights to be Exercised by Department: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

20.09 No Waiver: There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by one party, unless such waiver is explicitly made in writing by the other party. Any previous waiver, or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any

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subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other party.

20.10 Right to Regulate: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Lessee or its operations.

20.11 Severability: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.

20.12 Inspections: The authorized employees and representatives of the County and of any applicable Federal or State agency having jurisdiction hereof shall have the right of access to the Premises at all reasonable times for the purposes of inspection and testing to determine compliance with the provisions of this Agreement. This right of inspection and testing shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.

20.13 Payment of Taxes: The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises, its improvements and its operations under this Agreement; provided, however, the Lessee shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse ultimate conclusion of such legal proceedings against the Lessee shall constitute a default pursuant to Article 12.03 (Other Defaults).

20.14 Force Majeure: The terms and conditions of this Agreement (with the exception of the obligation of the Lessee to pay the amounts required by the terms of this Agreement) shall be subject to force majeure. Neither the County nor the Lessee shall be considered in default in the performance of its obligations hereunder, if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, strike, lock-out, epidemic, fire, wind, flood or because of any law, order, proclamation, regulation or ordinance of any government or of any subdivision thereof or because of any act of God or any other cause whether of similar or dissimilar nature beyond the reasonable control of the party affected, provided that notice of such force majeure is given by the affected party to the other within ten days of the beginning of said force majeure. Should one or both of the parties be prevented from fulfilling its contractual obligations by a state of force majeure lasting continuously for a period of six months, the parties shall consult with each other regarding the future implementation of this Agreement.

20.15 Interpretation of Agreement: This Agreement is the result of negotiation between the parties hereto and has been typed/printed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of or against any of the parties hereto.

20.16 Entirety of Agreement: The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

20.17 Disclosures: The Lessee acknowledges that it has completed and submitted a Drug Free Workplace Affidavit, a Miami-Dade Disclosure Affidavit, a Family Leave Affidavit, a Public Entity Crimes Affidavit, a Known Interests in Property Affidavit, a Criminal Record Affidavit, and a Disability Nondiscrimination Affidavit. The discovery of any misrepresentation of any of these documents shall result in the automatic termination of this Lease by the Department.

20.18 Height Restrictions: The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of any objects of natural growth, other obstructions, or newly constructed structures on the leased Premises and Improvements to such a height so as to comply with Federal Aviation Regulations. Part 77 and with the Code of Metropolitan Miami-Dade County, whichever is more restrictive.

20.19 Right to Regulate: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Lessee or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department, or any department, board or agency of the County, to agree to any specific request of Lessee that relates in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief, nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor

ATTEST: **County Clerk**
By: _____
Deputy Clerk

(SEAL)

LESSEE: JNJ GROWERS INC.

By: _____
President

Tobe DeSousa
Print Name

ATTEST:

_____
Corporate Secretary

_____
Print Name

(CORP. SEAL)

Approved as to form
And legal sufficency

_____
Assistant County Attorney

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor

ATTEST: **County Clerk**
By: _____
Deputy Clerk

(SEAL)

LESSEE: JNJ GROWERS INC.

By: _____
President

Jose DeSousa
Print Name

ATTEST:

_____
Corporate Secretary

_____
Print Name

(CORP. SEAL)

Approved as to form
And legal sufficency

_____
Assistant County Attorney

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor

ATTEST: **County Clerk**
By: _____
Deputy Clerk

(SEAL)

LESSEE: JNJ GROWERS INC.

By: _____
President

Jose DeSousa
Print Name

ATTEST:

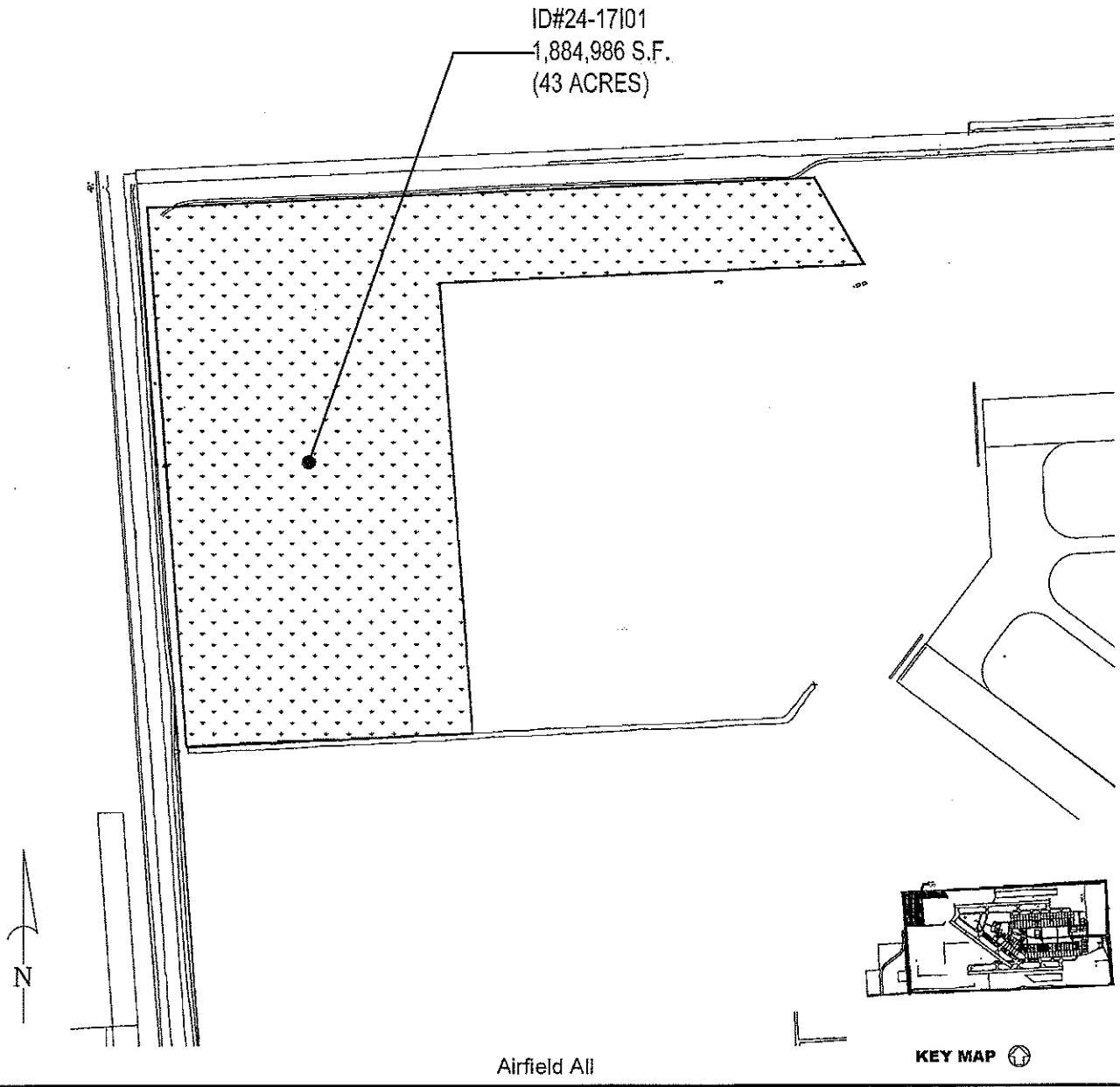
_____
Corporate Secretary

_____
Print Name

(CORP. SEAL)

Approved as to form
And legal sufficency

_____
Assistant County Attorney



Airfield All

CODE:	SPACE CLASS	SQ. FT.
	Airside Land	1,884,986
	(43 ACRES)	
		1,884,986

MIAMI DADE
AVIATION DEPARTMENT
KENDALL-TAMIAMI AIRPORT

EXHIBIT A

JNJ GROWERS INC

SCALE: 1" = 500'	FILE #: 3208	DATE: 5/21/2012

MIAMI INTERNATIONAL AIRPORT

MIAMI-DADE COUNTY

MIAMI-DADE COUNTY SINGLE EXECUTION AFFIDAVIT AND DECLARATION FORM

Rev. October 2011

Miami-Dade County requires each party desiring to enter into a contract with the County to (1) sign an affidavit as to certain matters and (2) make a declaration as to certain other matters. This form contains both an Affidavit form for matters requiring the entity to sign under oath and a Declaration form for matters requiring only an affirmation or declaration for other matters.

The Affidavit form and the matters covered by the Affidavit are in the first portion of this document. The Declaration form and the matters covered by the Declaration are in the last portion of this document.

(A). THE FOLLOWING MATTERS REQUIRE THE ENTITY TO SIGN AN AFFIDAVIT UNDER OATH:

STATE OF FLORIDA

COUNTY OF DADE

Before me the undersigned authority appeared _____ (Print Name),

who is personally known to me or who has provided _____ as

identification and who did take an oath and who stated:

That he or she is the duly authorized representative of

JNJ GROWERS INC.
(Name of Entity)

16070 SW 153rd AVE. Miami Fl. 33187
(Address of Entity)

20 / 0 - 4 / 0 / 8 / 9 / 8 / 4 / 9 / /
Federal Employment Identification Number

(hereinafter referred to as the contracting "entity"), and that he or she is the entity's

Jose De Sousa
(Sole Proprietor)(Partner)(President or Other Authorized Officer)

That he or she has full authority to make this affidavit, and that the information given herein and the documents attached hereto are true and correct; and

That he or she says as follows.

I. OWNERSHIP DISCLOSURE AFFIDAVIT

Section 2-8.1(d) of the Code of Miami-Dade County requires the contracting entity to disclose under oath the following information.

[ ] Check this box if the entity is a publicly-traded corporation which makes the entity exempt from the requirement of disclosing the following information.

[X] Check this box and answer the following questions if the entity is not a publicly-traded corporation:

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1. The full legal name and business address* of the person or entity (Contractor) contracting or transacting business with Miami-Dade County is:

JNJ GROWERS INC.

16070 SW 153rd. AVE. Miami Florida. 33187

2. If the contract or business transaction is with a Corporation**, provide the full legal name and business address* and title for each officer.

Joe De Sousa 16070 SW 153rd. Ave. Miami Florida 33187 (President)

3. If the contract or business transaction is with a Corporation**, provide the full legal name and business address* for each director.

Joe De Sousa 16070 153rd AVE.Miami, Fl. 33187 (100%)

4. If the contract or business transaction is with a Corporation**, provide the full legal name and business address* for each stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock and state the percentage.

Joe De Sousa 16070 SW 153rd. Ave. Miami, Fl. 33187 (100%)

5. If the contract or business transaction is with a Trust, provide the full legal name and address* for each trustee and each beneficiary. All such names and addresses are:

6. The full legal name and business addresses* of any other individuals (other than subcontractors, material men, suppliers, laborers, or lenders) who have, or will have, any interest (legal, equitable, beneficial or otherwise) in the contract or business transaction with Miami-Dade County are:

7. If a Corporate Joint Venture, list the names and titles of the Officers of the Corporate Members of the Joint Venture:

(a) President:		(b) President:	
Vice-Pres:		Vice-Pres:	
Secretary:		Secretary:	
Treasurer:		Treasurer:	

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8. If a Non-Corporate Partnership or Joint Venture, list the names of the Principals of the Non-Corporate Partnership or Joint Venture:

(c) _____ (Name) (d) _____ (Name)

(c) _____ (Title) (d) _____ (Title)

9. State whether the person or entity (Contractor) contracting or transacting business with Miami-Dade County has a collective bargaining agreement with its employees (Yes/No):

10. Attach a list of the health care benefits to be paid to employees performing work under this Contract.

11. Attach a list reflecting the current breakdown of the Contractor's work force and ownership as to race, national origin, and gender.

(ADD EXTRA SHEETS IF NEEDED)

* **Post Office Box addresses not acceptable.**
** **If a Joint Venture, list this information for each member of the Joint Venture**

II. EMPLOYMENT DRUG-FREE WORKPLACE CERTIFICATION (Section 2-8.1.2 of the Miami-Dade County Code)

All persons and entities that contract with Miami-Dade County are required to certify that they will maintain a drug-free workplace and such persons and entities are required to provide notice to employees and to impose sanctions for drug violations occurring in the workplace.

In compliance with Ordinance No. 92-15 of the Code of Miami-Dade County, the above named firm is providing a drug-free workplace. A written statement to each employee shall inform the employee about:

1. Danger of drug abuse in the workplace.
2. The firms' policy of maintaining a drug-free environment at all workplaces.
3. Availability of drug counseling, rehabilitation and employee assistance programs.
4. Penalties that may be imposed upon employees for drug abuse violations.

The firm shall also require an employee to sign a statement, as a condition of employment that the employee will abide by the terms of the drug-free workplace policy and notify to employer of any criminal drug conviction occurring no later than five (5) days after receiving notice of such conviction and impose appropriate personnel action against the employee up to and including termination. Firms may also comply with the County's Drug Free Workplace Certification where a person or entity is required to have a drug-free workplace policy by another local, state or federal agency, or maintains such of its own accord and such policy meets the intent of this ordinance.

[ ] **Check this box if, pursuant to Section 2-8.1.2(e) of the Code of Miami-Dade County, the entity has read the aforementioned requirements and the entity has received from the County's Procurement Management Division Director a waiver of the requirements of Section 2-8.1.2.**

III. ARREARAGE AFFIDAVIT (Section 2-8.1 of the Code)

The entity verifies that the entity submitting this affidavit is current in its obligations to the County and is not otherwise in default of any County contract. In addition, the entity verifies that the entity submitting this affidavit is not in arrears under any individual contract with the County in excess of $25,000 and which arrearage has been delinquent for greater than 180 days, or if such arrearage exists, the County has agreed in writing to a repayment schedule.

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IV. CODE OF BUSINESS ETHICS AFFIDAVIT

The contracting entity has adopted a Business Code of Ethics that complies with the requirements of Section 1 of Ordinance No. 01-96, codified as Section 2-8.1(i) of the Code of Miami-Dade County.

The above named entity hereby affirms its understanding that its failure comply with its Code of Business Ethics shall render any contract between it and the County voidable, and subject it to debarment from future County work pursuant to Section 10-38(h)(2) of the Code of Miami-Dade County. The Inspector General shall be authorized to investigate any alleged violation by a contractor of its Code of Business Ethics. Nothing contained herein shall be construed to limit the powers and duties of the Inspector General as stated in other sections of the Code of Miami-Dade County.

This single execution shall have the same force and effect as if each of the above four affidavits had been individually executed.

JNJ GROWERS INC.
Full name of entity

By: _____ President 6-5-12
Signature of Representative **Title** **Date**

Jose DeSousa
Print Name of Representative

STATE OF: FLORIDA

COUNTY OF: DADE

SUBSCRIBED AND SWORN TO (or affirmed) before me this 5th **day of** June, **20** 12

by Jose DeSousa, **of** JNJ Growers Inc, **who is personally**
(Authorized Representative)

known to me or has produced _____ **as and who did take an oath.**
(Type of Identification)

_____ EE086978
(Signature of Notary) **(Notary Commission Number)**

_____ _____
(Signature of Notary) **(Notary Commission Number)**

Notary Public – State of Florida
(State)

Notary Stamp or Seal:

NOTARY PUBLIC STATE OF FLORIDA
CATHALINA MILFORD
MY COMMISSION # EE 086978
EXPIRES: April 24, 2015
Bonded Thru Budget Notary Services

JPI

(B). THE FOLLOWING MATTERS REQUIRE THE ENTITY TO MAKE A DECLARATION OR STATEMENT AS TO THE MATTER COVERED BY THIS DECLARATION FORM:

1. FAMILY LEAVE PLAN DECLARATION (County Code Chap. 11A, Art V)

The entity hereby acknowledges the provisions of Section 11A-29 of the Miami-Dade County Code that requires each entity having more than fifty (50) employees working in Miami-Dade County to comply with the Family Leave ordinance set forth in Section 11A-29, and that Section 11A-29 provides that an employee who has worked for the above firm at least one year shall be entitled to 90 days family leave during any 24 month period for medical reasons, for the birth or adoption of a child, or for the care of a child, spouse or other close relative who has a serious health condition without risk of termination of employment or employer retaliation, among other things provided in such section. In addition, the entity declares that, if less than 50 are employed in Miami-Dade County by the entity at the time of execution of this Declaration, the entity will comply with the provisions of Section 11A-29 when it employs 50 or more employees in Miami-Dade County.

2. DISABILITY AND NONDISCRIMINATION DECLARATION

The entity is in compliance with, and agrees to continue to comply with, and assures that any subcontractor, or third party contractor under an agreement to which this Declaration applies, complies with, all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, providing programs and services, transportation, communications, access to facilities, renovations, and new construction:

> The Americans with Disabilities Act of 1990 (ADA), Pub.L. 101-336, 104 Stat 327, 42 U.S.C. 12101-12213 and 47 U.S.C. Sections 225 and 611 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private Entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions. The Rehabilitation Act of 1973, 29 U.S.C. Section 794; The Federal Transit Act, as amended, 42 U.S.C. Section 1612; The Fair Housing Act, as amended, 42 U.S.C. Section 3601-3631

3. CRIMINAL RECORD AFFIDAVIT (Section 2-8.6 of the Code)

The entity affirms its awareness of Section 2-8.6 of the Code of Miami-Dade County that requires the entity to disclose whether, during the past ten years, the entity or any officer, director or executive thereof has been convicted of a felony, and that such disclosure must be made at the time of bid or proposal submission, Any such applicable disclosure is attached to this Affidavit and Declaration form.

4. DECLARATION AS TO PUBLIC ENTITY CRIMES (Florida Statutes, § 287.133(3)(a)

The entity is aware of the provisions of Section 287.133 of the Florida Statutes that prohibits the entity from transacting business with the County if the entity or any affiliate, as defined in the statute, has been placed on the convicted vendor list following a conviction for a public entity crime.

As to Section 287.133, the entity understands that:

A. A "public entity crime" as defined in Paragraph 287.133(1) (g), Florida **Statutes**, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation;

B. "Convicted" or "conviction" as defined in Paragraph 287.133 (1)(b), **Florida Statutes**, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or

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state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contender;

C. An "affiliate" as defined in Paragraph 287.133(1) (a), **Florida Statutes**, means:

1. A predecessor or successor of a person convicted of a public entity crime: or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

D. A "person" as defined in Paragraph 287.133(1) (e), **Florida Statutes**, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.

5. DECLARATION OF OWNERSHIP INTEREST IN PROPERTY TO BE LEASED.

If this Affidavit and Declaration Form applies to property owned by the County to be leased to the entity, the entity declares its awareness of the obligation to identify the extent of the entity's ownership interest—if any—in the property to be leased to the entity. Any such ownership interest is reflected in a document attached to this Affidavit and Declaration Form.

6. AFFIRMATIVE ACTION PLAN/PROCUREMENT POLICY

[ ] The entity has a current Affirmative Action Plan and/or Procurement Policy as required by Section 2-8.1.5 of the Code, processed and approved for filing with Miami-Dade County Office of Capital Improvements under File No. _____ and the expiration date _____; or

[ ] The contracting entity has a Board of Directors which is representative of the population make-up of the nation and hereby claims exemption in accordance with the requirements of Section 2-8.1.5 of the Code. Said contracting entity has a current Board of Directors Disclosure form as required by Section 2-8.1.5, processed and approved for filing with Miami-Dade County Office of Capital Improvements under File No. _____ and the expiration date of _____; or

[X] The requirements of Section 2-8.1.5 are not applicable to the entity because the entity has annual gross revenues less than or equal to $5 million.

[ ] The contracting entity is a foreign air carrier as defined under federal law and has been granted an exemption under U.S. Department of Transportation Docket No. _____ to engage in air carrier service within the United States.

JNJ GROWERS INC.
Full name of Entity

Signature of Entity Representative

Jose DeSousa
Printed Name of Entity Representative

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AFFIRMATION

My name is Jose De Sousa and I acknowledge that I have been duly sworn to make this affirmation:

I hereby affirm that I am the President/Principal of JNJ GROWERS INC., and that I have full corporate authority to enter into and execute

Lease Agreement No. **T-007250** with Miami-Dade Aviation Department on

behalf of JNJ GROWERS Inc.

JNJ GROWERS INC.

(Entity Name)

By: _____ Date: 6-12-12

President

Jose De Sousa

Print Name

STATE OF: **Florida**

COUNTY OF: **Dade**

SUBSCRIBED AND SWORN TO (or affirmed) before me this 12th day of June, 2012 by Jose De Sousa,

(Authorized Representative)

of JNJ Growers Inc, who is personally known to me or has produced _____ as

(Type of Identification)

and who did / did not take an oath.

_____ EE086978

(Signature of Notary) (Notary Commission Number)

Notary Public – State of Florida Notary Stamp or Seal:

(State)

NOTARY PUBLIC STATE OF FLORIDA

CATHALINA MILFORD
MY COMMISSION # EE 086978
EXPIRES: April 24, 2015
Bonded Thru Budget Notary Services

APPLICATION & QUESTIONNAIRE

1. Name of Applicant: JNJ GROWERS INC.

2. Principal Office Address: 16070 SW 153RD AVE. Miami Fl. 33187

   Phone: (305)234-0074 Fax: (305) 86 4378 256-3478

3. Official Representative: Jose De Sousa

   Title: President

   Address: 16070 SW 153RD AVE. Miami Fl. 33187

   Billing Address: 16070 SW 153RD AVE. Miami Fl. 33187

4. a. ☐ Individual ☐ Partnership ☒ Corporation

   If company is a corporation, is applicant a subsidiary? ☐ Yes ☒ No
   If yes, please provide name and address of Parent Corporation:

   N/A

   b. If applicant is a Corporation, complete the following:

   When Incorporated: 01/09/2006

   In what State: FLORIDA

   If not a Florida Corporation, date of registration with Florida Secretary of State along with name and address of Florida Registered Agent:

   N/A

   c. If Partnership, complete the following:

   Date or Organization: N/A

   General or Limited Partnership: N/A

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Name and address of each Partner:

Name	General/Limited Partnership	Address

(Attach a copy of: Partnership Agreement and if applicable, the certificate evidencing compliance with the Florida Fictitious Name Statute).

5. Bank References:

Bank	Address
BANK OF AMERICA	31201 SW Dixie Hwy. Homestead Fl.

6. The Department reserves the right to request the financial statements of the corporation, partnership or individual making application for lease or contract. If the corporation or partnership is newly formed for the purpose of this lease or contract and not in business for a period of time greater than one year, the Department reserves the right to request the financial statements of stockholders of the corporation or the partners in a partnership of those holding more than 5% ownership interest in such partnership or corporation. In addition, the Department also reserves the right to review financial statements or any other material presented to a bonding company y for the purpose of obtaining a Performance Bond.

7. The Applicant(s) understands that the information contained in this Application and Questionnaire Form is to be relied upon by the County in its consideration for entering into lease or contract and such information is warranted by the Application(s) to be true. The undersigned agrees to furnish upon request any additional information as may be required by the County.

8. The Applicant(s) understands that the County has the right to verify the information submitted and to seek any additional information relating to the Applicant(s). The discovery of any misrepresentation, which, in the sole opinion of the County, materially affects the qualifications of the Applicant to perform under the lease or contract, without liability shall result in the County's withdrawal of its offer to enter into a lease or a contract.

9. The Applicant(s), if a corporation, must be authorized to do business in the State of Florida and must be incorporated under the laws of one of the States of the United States.

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10. Please select the airport you are interest in:

- ☐ Miami International Airport
- ☐ Opa-locka Airport
- ☒ Kendall-Tamiami Airport
- ☐ Homestead Airport

11. Purpose of which applicant intends to use space:

FARMING

12. Type and amount of space needed (Offices, Warehouses, Ramps, Etc.)

AVAILABLE ACREAGES

13. Number of years of experience applicant has had in operation of similar business: ##33years

14. Give the names, locations and dates operation of similar business conducted by applicant in the last 5-years.

Name of Company	Location	Type of Business	Date
JNJ Growers Inc.	TMB	FARMING	2001-2012

APPLICANT:

Name: JNJ GROWERS INC. (Jose De Sousa)(

Title: President

Signature:

NOTE: **An Officer or Owner(s) must sign all questions or requests for information.**

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